

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 November 2012

Public Authority: Ministry of Justice

Address: 102 Petty France

London

SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information about how many court cases had been adjourned since the Applied Language Solutions contract for translation services went live. The Ministry of Justice ('MOJ') refused to provide the requested information on the basis that it had estimated that the cost of compliance with the request would exceed the appropriate limit under section 12(1) of FOIA (cost to comply exceeds the appropriate limit). The Information Commissioner has investigated and has found that the MOJ correctly relied on section 12(1) in refusing to provide the requested information. He does not require the MOJ to take any further steps.

Background

2. In August 2011, Applied Language Solutions ('ALS'), a subsidiary of the provider Capita, was awarded a five-year contract with the Ministry of Justice ('MOJ') to act as the sole supplier for providing the courts with interpreters and translation services. This contract became operational in January 2012.

Request and response

3. On 10 May 2012 the complainant wrote to the MOJ and requested information in the following terms:

"I would like to request the following information under the Freedom of Information Act 2000, concerning the interpreting service

agreement under which Applied Language Solutions has been providing interpreting services to the HMCTS:

*How many cases have been **adjourned** by the court where no interpreter was provided, since the ALS contract went live on 30th January 2012?"*

4. The MOJ responded on 12 June 2012. It confirmed the MOJ held the requested information but stated it would not be able to provide the information because to do so would exceed the cost limit set out in section 12(1) of FOIA. Outside of FOIA and on a "*discretionary basis*" it advised the complainant that the MOJ had published a statistical report on the use of interpreters on 24 May 2012 and provided the relevant weblink.
5. The MOJ offered advice and assistance in accordance with section 16 of FOIA and suggested the complainant might refine his request to bring it under the cost limit. The MOJ said that the complainant, may, for example, consider asking for the information over a shorter time period, but explained that due to the way in which the information is recorded, it may still exceed the cost limit.
6. Following an internal review the MOJ wrote to the complainant on 10 July 2012 upholding the original decision. It further explained that the central record of cases involving interpreters at Crown and Magistrates' Courts does not hold the level of detail the complainant had requested, such that a manual search of around 1500 files would be necessary. The MOJ also told the complainant about a weblink via which he could find statistics on ineffective trials due to interpreter availability, published on 28 June 2012.

Scope of the case

7. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He submitted some information for the Information Commissioner to consider in support of his view that the MOJ had inappropriately applied cost to his request. This is set out at paragraphs 22 to 26 of this notice.
8. The Information Commissioner has considered whether the MOJ properly applied section 12(1) of FOIA to this request.

Reasons for decision

9. Section 12(1) of FOIA states:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

10. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the 'Fees Regulations') provide that the cost limit for central government public authorities is £600. This must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours.
11. If a public authority estimates that complying with the requests would exceed 24 hours, or £600, section 12(1) provides that the request may be refused.
12. The Information Commissioner will now consider whether the MOJ was entitled to apply section 12(1) to the request.
13. A public authority can only take certain activities into account when assessing whether compliance with a request would exceed the cost limit. These factors are:
 - a. determining whether it holds the information;
 - b. locating a document containing the information;
 - c. retrieving a document containing the information; and
 - d. extracting the information from a document containing it.
14. The Information Commissioner asked the MOJ to provide a detailed reasonable estimate of the time taken and costs that would be incurred by providing the information falling within the scope of the request. He also asked it to provide a detailed explanation as to how it had investigated, assessed and calculated those costs.
15. The MOJ explained that it does centrally hold information on cracked and ineffective trials as provided by courts (i.e. where a trial does not proceed) with 'interpreters' being one of the listed reasons within that data. It said, however, that the term 'case' as used in the complainant's request is wider than simply the trial, in that it also includes all pre and post-trial hearings relating to the case, such as case management hearings and sentencing at which interpreters are also used. The MOJ advised that it does not record adjournments resulting from non-attendance by interpreters.
16. The MOJ explained that each Magistrates and Crown Court, including Birmingham Crown Court, hears several hundred cases each month. It confirmed that there are 1500 case files at the named court in scope of the request and that it had calculated it would take approximately 125 hours to check the volume of files covered by the request at a "conservative" estimate of five minutes per case file. Based on an eight

hour working day it would, according to the MOJ, take over 13 working days at a total cost of £3125 for the MOJ to comply with the request, which far exceeds the cost limit of £600 set by FOIA for central government departments. The MOJ enclosed a copy of its cost form which it had completed during its assessment, which summarised the above.

17. The MOJ estimated it would take a minute to search through the 1500 case files to determine if information is held, equivalent to 25 hours at £25 per hour costing £625.
18. It said to locate a document within the 1500 case files which may contain the information would take it an estimated minute per file, equivalent to 25 hours at £25 per hour costing £625.
19. The MOJ estimated it would take a minute for it to search through 1500 case files to retrieve a document which may contain the information, equating to 25 hours at £25 per hour at a cost of £625.
20. It would take the MOJ an estimated two minutes for each of the 1500 case files to extract the information from a document containing it, and from that compile a list of cases adjourned specifically due to the non-provision of interpreter services by ALS, stating that this would equate to 50 hours at £25 per hour costing £1250.
21. It confirmed that a sampling exercise of this search had been done and that its estimate was based on the quickest method of gathering the information, which in this case was the only method available to it, being a manual search.
22. The complainant submitted some supporting information for the Information Commissioner to consider. He contended that on 21 March 2012, Mr Crispin Blunt, Parliamentary Under-Secretary of State at the MOJ, said *"The MOJ are receiving daily management from the contractor concentrating on priority areas of interpreter availability and fulfilment of bookings"* giving the relevant Hansard reference. The Information Commissioner asked the MOJ to comment on this statement.
23. In reply, the MOJ advised that the management information consists of daily and weekly fulfilment rates by venue and by language and figures on the number of bookings made, assigned at short notice and unfilled. It said that this information also includes figures on the number of bookings made, assigned at short notice and unfilled, but does not include records of cases adjourned as requested by the complainant.
24. The MOJ stated that it therefore does not hold a central record of adjournments beyond those which lead to ineffective trials. For this

reason, it would only be possible to obtain the requested information by manually searching the files of the named court to identify information in respect of all forms of trial (ie including case management hearings and sentencing hearings). It explained that this information would normally be contained as part of documents in a case file.

25. The complainant also drew the Information Commissioner's attention to other requests previously answered by the MOJ asking for information on a similar theme to his own request. In these cases, the MOJ had provided the requested information and had not applied the cost exclusion. The Information Commissioner asked the MOJ for its view on the complainant's contention.
26. The MOJ explained that the other requests highlighted did not refer to 'adjournments' but rather numbers of assignments requiring certain languages, and further detail of the daily monitoring arrangements. It said that in these cases it was able to gather the data requested because the information was held in a format that allowed it to be readily compiled.
27. The Information Commissioner formed a preliminary view that the MOJ was entitled to rely on section 12(1) as to search for the requested information would, in itself, exceed the appropriate limit. He wrote to the complainant on 2 October 2012 about his preliminary view and invited the complainant to consider withdrawing his complaint. The complainant declined.
28. At the time of this investigation, the Information Commissioner was also investigating another complaint in which part of the request asked for the following:

*"How many cases have been **adjourned by the court** where no interpreter was provided since the ALS contract went live on 30 January 2012?"*

29. In this case (*reference FS50456702*), the MOJ also applied section 12(1) of FOIA and provided similar arguments to those in this notice. The Information Commissioner reached a preliminary view in *FS50456792* that the MOJ had appropriately applied costs to the requests and wrote to the complainant with this view. She also declined to withdraw and submitted a weblink to a Public Accounts Committee discussion about the ALS contract, highlighting the specific part of the discussion she wished the Information Commissioner to consider:

<http://www.telegraph.co.uk/news/uknews/law-and-order/9287368/MOJ-to-monitor-court-interpreters-after-one-in-ten-fail-to-turn-up-or-get-translation-wrong.html>

30. The Information Commissioner has reviewed the debate and noted that, at the specified point a question was asked whether the ALS systems pick up the fact that, for example, a trial was adjourned on Friday in Aylesbury due to the lack of an interpreter and how does that happen. It was confirmed that the MOJ receives "*weekly information*" which includes details about a particular trial, a particular court and what language was spoken such that the MOJ would know, for example, that Polish was spoken on Friday at the Old Bailey. It was then asked whether the report picks up "*collateral information such as costs of custody*". In response to this it was explained that the MOJ does receive some additional information.
31. Given that both complainants had requested information about how many cases had been adjourned by the court where no interpreter was provided since the ALS contract went live on 30 January 2012, the Information Commissioner considers that the above discussion is also relevant to the complaint which is the subject of this decision notice. Although the complainant did not raise the matter himself, the Information Commissioner has set out below the steps he undertook in relation to *FS50456702* in order to illustrate his considerations in reaching a conclusion in this case (*reference FS50459076*).
32. The Information Commissioner wrote to the MOJ on 22 October 2012 asking it some further questions in light of this discussion by the Public Accounts Committee. In reply the MOJ confirmed that it does receive a weekly report from ALS on a number of performance management criteria including (but not limited to) fulfilment of assignments, did not attend, complaints, problematic languages and problematic venues. It provided the Information Commissioner with a copy of a sample report. Whilst the MOJ had undertaken daily monitoring in the early stages of the ALS contract, it now monitors on a weekly basis.
33. The MOJ reiterated its explanation about the term 'cases' being broader than simply the trial and stated it would be possible in some cases for it to identify from the assignments data provided, that a particular trial and the particular court requiring a certain language was unfulfilled, for example, as mentioned in the evidence to the Public Accounts Committee, "Polish on Friday at the Old Bailey", but that this would not automatically result in an adjournment.
34. The MOJ said that a search of the court files would also be necessary to check whether an adjournment had occurred and, if so, the reasons for it. It explained that statistics which have been subsequently published by the MOJ relate to bookings rather than individual cases and so cannot be used to indicate the number of cancellations at the court in question as there may be multiple interpreter bookings over the course of a single case. The MOJ stated that it would not be possible to conduct this exercise without exceeding the cost limit set down by FOIA.

35. The MOJ confirmed that there is no centrally collected data which identifies interpreter failure as a reason for adjournment, although adjournments are recorded on each individual court file. It reiterated that collecting this information in order to satisfy the terms of the complainant's request would exceed the cost limit set out in section 12(1) of FOIA.
36. On the basis of the foregoing, the Information Commissioner is satisfied that the MOJ has correctly applied section 12(1) as compliance with the request would exceed the appropriate cost limit.

Advice and assistance

37. If the public authority estimates the cost of determining whether the information is held as being above the appropriate limit, it is not required to conduct searches but should consider providing advice and assistance. The Information Commissioner is satisfied that the MOJ provided advice and assistance in this case in accordance with section 16 of FOIA.

Right of appeal

38. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

39. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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